

REMARKS

I. CLAIM AMENDMENTS

Claims 1-147 were pending in the application. Claims 49-114, drawn to non-elected subject matter, have been canceled without prejudice. Applicants retain the right to pursue the subject matter of the canceled claims in related patent applications. Claims 115-118, 121, 124, 127, 132-134, 136, and 143-146 have been amended to clarify Applicants' invention, and new claims 148-161 have been added. No new matter has been added. Upon entry of the above made amendment, claims 115-161 will be pending.

Support for the claim amendments is found in the original claims and throughout the specification. For example:

Claim 115 is amended to correct grammatical errors.

Support for amended claim 116 is found at page 130, lines 15-33 and page 156, lines 19-21.

Support for amended claims 117-118 is found at page 157, lines 25-28.

Support for amended claim 121 is found at page 129, line 28 - page 130, line 10.

Claims 124 and 127 are amended to correct a grammatical error.

Support for amended claims 132-134 is found at page 118, line 27 - page 119, line 26.

Support for amended claim 136 is found at page 118, lines 16-26.

Support for amended claims 143-146 is found at page 158, line 20 - page 160, line 29.

Support for new claims 148-161 is found throughout the specification and original claims.

For example, support for new claim 148 is found on page 157, line 8 - page 158, line 10.

Support for new claims 149-151 are found on page 130, line 15 - page 131, line 2.

Support for new claim 152 is found on page 131, line 6 - page 132, line 18.

Support for new claims 153-154 is found on page 143, line 11-19.

Support for new claims 155-159 is found on page 155, line 24 - page 158, line 10.

Support for new claim 160 is found at page 129, line 28 - page 130, line 10.
Support for new claim 160 is found at page 130, lines 15-33 and page 156,
lines 19-21.

II. RESTRICTION REQUIREMENT

The Examiner has required a restriction under 35 U.S.C. § 121 to one of the following inventions:

- I. Claims 49-81, drawn to an apparatus for analysis of a sample on a solid phase surface, classified in class 422, subclass 50.
- II. Claims 82-114, drawn to an apparatus for analysis of a sample on a solid phase, classified in class 422, subclass 68.1.
- III. Claims 115-147, drawn to an apparatus for analysis of a sample on a solid phase surface, classified in class 422, subclass 82.05.

The Examiner contends that the inventions are distinct, each from the other.

In order to be fully responsive, Applicants hereby elect the invention of Group III, claims 115-147, as amended, drawn to an apparatus for analysis of a sample on a solid phase surface, classified in class 422, subclass 82.05, with traversal.

With respect to Examiner's division of the invention into three groups and the reasons stated therefor, Applicants respectfully traverse.

Even assuming arguendo that Groups I-III represented distinct or independent inventions, Applicants submit that to search the subject matter of all the Groups together would not be a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, August 2001, Latest Revision February 2003) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of M.P.E.P. § 803, all of claims 49-147 should be searched and examined in the subject application. Applicants believe that the same search can be used for all of Groups I, II and III.

Applicants point out that new independent claim 148 encompasses each of the aspects identified by the Examiner as distinctive for Groups I-III. In particular, new claim 148 does not recite a particular orientation of the light source, detector and sample with respect to one another as in independent claims 49, 82 and 115. Similarly, claim 149 encompasses the each of the aspects identified by the Examiner as distinct for Groups II and III. Thus, Applicants respectfully contend that examining the subject matter of Groups I-III can be made without serious burden on the Examiner.

Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be withdrawn and the instant claims be examined in one application.

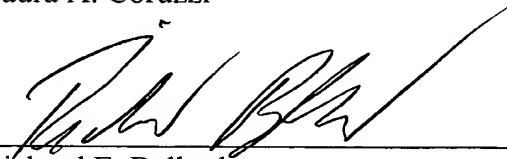
Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicants respectfully request that the amendments and remarks made herein be entered and made of record in the file history of the instant application.

Respectfully submitted,

Date: March 8, 2004

Laura A. Coruzzi 30,742
(Reg. No.)

By: _____
Richard E. Ballard 46,078
(Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017-6702
Attorneys for Applicants